

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

HOWARD CARTER,
Plaintiff,
v.
KATHLEEN KANE, et al.,
Defendants.

CA. NO. 16-36 Erie

ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING CASE

HOWARD CARTER,)

Plaintiff,)

V.)

CA. NO. 16-36 Erie

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING CASE

KATHLEEN KANE, et al.,)

Defendants.)

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court, having reviewed the Report and Recommendation of the Honorable Susan P. Baxter, United States Magistrate Judge, Plaintiff's Objections thereto, and the balance of the record, does hereby find that:

- (1) Plaintiff filed this civil rights action on February 10, 2016. Along with this action, Plaintiff has filed six other lawsuits in this Court, Case Nos. 16-7, 16-31, 16-32, 16-33, 16-34, and 16-35;
- (2) By Order dated February 18, 2016, the Magistrate Judge directed Plaintiff to pay

1 the filing fee for the instant case or seek leave to proceed *in forma pauperis*
2 before March 1, 2016, or risk dismissal of this case for failure to prosecute.
3 Plaintiff did not comply. On March 10, 2016, the Magistrate Judge directed
4 Plaintiff to show cause for his failure to pay the filing fee or seek leave to proceed
5 *in forma pauperis*. The Order further directed Plaintiff to provide a USM285 form
6 for each named Defendant in this action. The Order expressly warned that
7 Plaintiff's failure to comply before March 24, 2016, would result in the dismissal
8 of this action due to Plaintiff's failure to prosecute. On March 28, 2016, Plaintiff
9 filed a motion seeking leave to proceed *in forma pauperis*. Plaintiff's motion did
10 not contain the requisite institutional account statement, nor did Plaintiff submit
11 the required USM285 forms. By Order dated May 17, 2016, Plaintiff was directed to
12 file his institutional account statement in support of his motion for *in forma*
13 *pauperis status*. Plaintiff was given until June 17, 2016, to do so. The Order
14 warned that Plaintiff's failure to comply would result in the dismissal of this
15 action for failure to prosecute. Plaintiff failed to comply so the Magistrate Judge
16 issued the Report and Recommendation recommending that this Court dismiss the
17 instant lawsuit;
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20 (3) The Court has reviewed Plaintiff's Objections to the Report and
21 Recommendation. First, the Court notes that the Objections are not timely, filed
22 six days after the deadline for filing objections expired. Next, Plaintiff claims that
23 he did file the requisite institutional account statement and the required USM285
24 forms. The docket belies this statement. The Court notes that Plaintiff did file a
25 second motion to proceed *in forma pauperis* on June 13, 2016, but the portion of

1 the form that is supposed to be filed out by a prison official regarding Plaintiff's
2 institutional account is blank. Lastly, Plaintiff uses the remainder of his Objection
3 to re-allege the complaints set forth in his complaint, allegations that are not
4 relevant to the Court's orders to show cause. Applying the six-factor balancing
5 test as set out by the Third Circuit in *Poulis v. State Farm Fire & Casualty Co.*,
6 747 F.2d 863 (3d Cir. 1984), the Court finds that dismissal of this case is
7 warranted for the reasons set forth in the Report and Recommendation;

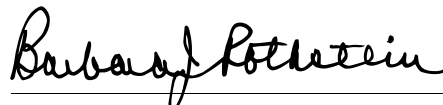
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9 (4) Based on the foregoing, the Court HEREBY ADOPTS the Report and
10 Recommendation;

11 (5) Plaintiff's motions to proceed *in forma pauperis* are HEREBY DENIED and this
12 case is DISMISSED in its entirety;

13 (6) The Clerk of the Court is respectfully directed to send copies of this Order to
14 Plaintiff, Defendants, and to Judge Baxter.

15 **IT IS SO ORDERED.**

16 DATED this 13th day of September, 2016.

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19 Barbara Jacobs Rothstein
20 U.S. District Court Judge
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